

As an initial matter Applicants would like to point out a typographical error. Group VIII should comprise claims 27-33 and not claims 27-32 as stated in the Office Action. Please note that according to the Office Action, Group VIII consists of claims 27-32 and Group IX consists of claims 34-38. Therefore, claim 33 is not listed in any Group.

In response to the restriction requirement, Applicants hereby elect Group I, Claims 1 to 3 for examination with traverse, and request reconsideration of the requirement.

With respect to Groups I and VIII, the two groups are related as a product and method of using the product and, as such, there is a close parity between the claims. The Examiner's statement that the "DNA of Group I . . . [is] neither used nor made by the methods of Groups V, VI and VIII" is patently wrong. The methods of Group VIII rely on expressing in a cell the DNA sequence of Group I. Furthermore, the Examiner does not even attempt to meet the MPEP 806.05(h) requirement that to show that a product and method of using that product are distinct inventions, one or both of the following should be shown: (1) the process as claimed can be practiced with another materially different product, or (2) the product as claimed can be used in a materially different process. Without such a showing, and because there is a close correspondence between the process of use and product claims of Groups VIII and I, respectively, there is no need to impose upon the applicants the added expense of filing and prosecuting an additional application for these two groups of claims. Applicants, therefore, respectfully request reconsideration of the restriction requirement between Claim Groups I and VIII, and ask that it be withdrawn.

The Commissioner may require restriction only when the inventions are independent or distinct, and examination without restriction presents a serious burden to the examiner. See MPEP § 803. Examiners must provide reasons and/or examples to support their conclusions regarding the status of the inventions and the seriousness of the burden. Id.

Applicants submit, however, that examination of Groups I-IX would not impose a serious burden on the Examiner, as required for restriction. See MPEP 803. Because all of the claims of the various groups relate to the DNA of Group I or the polypeptides of Group II, a prior art search for Claim Group I and II is likely to develop material relevant to all nine groups.

According to the MPEP guidelines designed to determine whether inventions are *independent* from others, the term "independent" means that there is no disclosed relationship between the subject matter, that is, "they are unconnected in design, operation, or effect." See



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